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Town Planner's Project Review
Wednesday, August 28, 2019

- XI. **Bed and Breakfast Ordinance.** Review of proposed amendments to the Zoning Ordinance initiated by the Town Council regarding Bed and Breakfast/Air Bed and Breakfast establishments.
- I recommend that the board schedule a public hearing on the proposed amendments as prepared by the Town Council for September 11.

Please note the following:

- **Amendment.** The Town Council initiated an amendment to the Zoning Ordinance for bed and breakfasts on July 15, 2019. The proposed amendment is included in the packets.
- **Timeframe.** The Planning Board must provide its recommendation on an amendment initiated by the Town Council within 60 days but the Town Council granted an extension at its meeting on September 19, so the board has until October 30 to make its recommendation.
- **New paradigm.** The current zoning ordinance is based on the traditional bed and breakfast establishment. With the advent of Air Bed and Breakfast and similar operations the ordinance needs to be updated. A number of Durham property owners have sought to rent their houses to short-term visitors largely via the internet and to provide fewer services and operate with less formality and oversight than the traditional bed and breakfast. An Air Bed and Breakfast operation can help home-owners raise income through home rental, but can also have significant adverse impacts upon a neighborhood, in terms of traffic, parking, trash, noise, unruly guests, and partying, if it is not carefully managed.
- **Earlier proposal.** In 2016 an amendment to the ordinance to address these same issues was presented to the Town Council. Council members had some concerns with the proposal so it did not move forward.
- **New proposal.** Given ongoing concerns about proposed Air Bed and Breakfast-type operations in Durham, and problems experienced in other towns and cities nationwide, Councilor Welsh spoke with the staff about developing a new proposal. He conducted

research into the current marketplace for Air Bed and Breakfast establishments and reviewed ordinances and issues in several other communities. He worked with Audrey Cline and Michael Behrendt to develop this new proposal to accommodate the use while incorporating appropriate safeguards.

- Zoning designations. A bed and breakfast is currently permitted by right (P) in the four residential zones and as a conditional use - adaptive reuse of an existing building (CUA) in every other commercial/industry zone except for ORLI and the Durham Business Park. This use would be changed to a special exception (SE) in the residential zones to provide more protection for those sensitive districts. The CUA is a restrictive and cumbersome designation so the use would be changed to a permitted use in the five retail/commercial zones and a special exception in the OR, MUDOR, and ORLI zones. Site plan review would not be required but the Zoning Administrator would review the application carefully for compliance with building and fire codes and the ordinance requirements.
- Rental housing program. The proposal brings bed and breakfasts under the Town's rental housing program. Audrey later pointed out a conflict between with that existing ordinance which includes this language:

*172-4 B. The term residential rental property owner as used herein shall not include the owners of dormitories at the University of New Hampshire, hotels, inns **or bed and breakfasts**, but shall include the owners of fraternities and sororities.*

Audrey noted: "I can't say why B&B's were excluded from the Housing Standards Ordinance as that was before my time, but I am going to speculate that B&B's were seen as more commercial properties along with Inns and Hotels that fall under a separate inspection process of the State Fire Code and therefore were regulated on that basis.

"Since we have restricted B&B's in the new ordinance to 'accessory to single family dwellings' and also restricted the number of rental rooms, the new B&B's are essentially room rentals in single family dwellings, and in my opinion, should be inspected along with the other rental properties. My feeling is that the most efficient way to accomplish this is by amending 172-4 B by removing the wording bolded in the quote above."

John Powers, Deputy Fire Chief said: "...the FD would still have the authority to periodically inspect B&Bs for fire and life safety code compliance whereas aspects of the building are considered 'rental' one- and two-family dwellings, (ref. RSA 153-1, Saf-C 6000 and RSA 153:10-a), as well as if they are defined as anything other than one- and two-family dwellings.

"Audrey is correct; the housing standards ordinance would not empower us to routinely inspect for compliance with the housing standards as it is written today. If the town wishes to enforce the housing standards in B&Bs, we may need to include language in the proposed change, or propose a change to Chapter 72 of our ordinances to reflect such desire."

We can hold the public hearing on the draft as written and determine soon how to address this issue.

- Rationale for amendment. Here is the Whereas section of the Town Council's ordinance which explains the rationale for the amendment.

WHEREAS, there is a current nationwide phenomenon of the establishment of less-formal bed and breakfast-type establishments, promoted by airbnb.com and other organizations operating on the internet and in other media; and

WHEREAS, this type of establishment may be an appropriate and beneficial use in the community, but can also be disruptive and inappropriate in certain situations, so various safeguards should be created; and

WHEREAS, there are currently provisions in the Durham Zoning Ordinance addressing traditional bed and breakfasts establishments which do not accommodate this current trend, in part because provision of breakfast is now required and the less-formal type establishments typically do not provide breakfast, resulting potentially in the loss of appropriate and beneficial business activity, supplemental income to homeowners, and opportunities for visitors to Durham; and

WHEREAS, without adopting an appropriate ordinance, interested parties would need to seek variances to allow for this use, but such activity should be clearly regulated by a carefully-crafted ordinance rather than by individual requests for variances, and without an ordinance other parties might be more likely to attempt to establish this use illegally without pursuing a permit from the Town; and

WHEREAS, the proposed amendment has been carefully considered to provide for necessary safeguards for the protection of the social capital of neighborhoods and the community and should make enforcement upon illegal establishments easier; ...